

Feb. 24, 1977

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

77-08

PETITION OF STATE EMPLOYEES ASSOCIATION AND STATE
NEGOTIATING COMMITTEE FOR DECLARATORY JUDGMENT

APPEARANCES

STATE NEGOTIATING COMMITTEE: James C. Sargent, Jr., Assistant
Attorney General.

STATE EMPLOYEES ASSOCIATION: Richard E. Molin, Assistant
Executive Director, Linda Murtha, SEA Legal Intern.

A hearing was held on February 4, 1977 pursuant to the provisions of Rule 8.1 for Declaratory Judgment on matters raised in a Petition of the parties concerning bargainable subjects. The parties submitted briefs, supplementary briefs and legal memoranda.

FINDINGS

1. The Legislature in 1975 passed RSA 273-A replacing RSA 98-C. This new act made no reference to nor did it expressly repeal RSA 98 which created the Personnel Commission. The Personnel Commission Law and the rules which are promulgated under it, comprise the "Merit System" for hiring, pay, classification and promotion in New Hampshire, as is reflected in RSA 98:18 and other provisions of the statute designed to separate classified state service from politics.

In RSA 273-A:3 (III), the Legislature stated that certain matters "shall not be subjects of bargaining" under the provisions of the law. Those were

"Matters regarding the policies and practice of any merit system established by statute, charter or ordinance relating to recruitment, examination, appointment and advancement under conditions of political neutrality and based upon principles of merit and competence . . ."

The Board cannot find that the Legislature intended to repeal, alter or make bargainable any of the provisions of RSA 98 or the rules published by the Personnel Commission. Specific reference is made in RSA 273-A to the merit system which was law at the time and known to the Legislature when RSA 273-A was passed. The parties are prohibited by law from bargaining over items specifically covered by that system (see specific rulings below).

2. Absent a directive in the law not to bargain over a specific type of proposal, the statute requires, in RSA 273-A:3, that the parties must bargain in good faith over the "Terms of employment." These are defined in RSA 273-A:1 (XI) as "wages, hours and other conditions of employment other than managerial policy within the exclusive prerogative of the public employer" (emphasis added). The emphasized phrase is defined in the same section "to include but shall not be limited to the functions, programs and methods of the public employer, including the use of technology, the public employer's organizational structure, and the selection, direction and number of its personnel, so as to continue public control of governmental functions."

The Board considers the final phrase of that section to set its tone. The Legislature did not wish to allow governmental direction to be bargained away; which means among other things what the government is to do, how it is to do it, and who is to perform it (following the Personnel Commission Rules). Such matters are not bargainable (see specific rulings below).

3. Applying the requirements to bargain with the restrictions discussed above, the Board decides the issues presented as follows:

A. Subcontracting Out of Bargaining Unit Work - Proposed Article XV

The decision to subcontract work is one which is a decision as to what function the state will perform, who will perform it and how it will be done. It is therefore excluded from the area of permissible bargaining subjects. The SEA proposal clearly invades those areas of prohibition by attempting to set the conditions for contracting out.

B. Training and Education - Proposed Article XVII T

Certain items proposed in this item are not covered by the Personnel rules, are benefits of a cost nature which could, if negotiated, be viewed as supplemental to wages and are therefore found to be negotiable.

Specifically, items 18.1, 18.3, 18.4, 18.7, are negotiable to the extent they relate to cost benefits.

Items 18.1, 18.2, 18.5, 18.6, 18.8, 18.9, 18.10 and 18.11 to the extent they concern leaves of absence and/or time off, or require the state to establish training programs, are items covered by the Personnel Rules, Rule VII, Section 5(a), and/or require action by Governor and Council, and/or are matters which dictate what programs the State will establish, a prohibited subject of State discretion.

C. Discipline and Involuntary Separation -
Proposed Article XIX

The Board recognizes that discipline and separation are matters of critical concern to state employees as the SEA maintains in its brief. However, in light of the statutory provisions, the Board finds proposed Article XIX to be prohibited from the subjects of bargaining since it is clearly covered by the Personnel Commission Rules, Rule VIII, which makes such actions a matter of discretion. The Board therefore finds this matter prohibited by RSA 273-A:3 (III) and RSA-A:1 (XI).

D. Classification - Proposed Article XIII

The Personnel Commission has been granted, as part and parcel of its authority, the power to classify state employees. It is within this frame-work that all other state personnel matters exist and the system so established pre-dated the passage of RSA 273-A. The Board finds that negotiations of this proposal are prohibited under RSA 273-A:3 (III).

E. Wage and Salary Administration - Proposed Article X

Personnel Commission Rules cover these proposed items which are prohibited from bargainable subjects. Therefore, other than wages themselves, said items shall not be bargainable.

F. Promotion, Transfer, Layoff and Seniority -
Proposed Article XVI

Seniority is covered by Personnel Rule VIII Section 6 and is therefore excluded from bargaining by RSA 273-A:3 (III). Layoff is also covered by Commission Rules VIII, Section 5 which controls, making it a prohibited subject.

RSA 273-A:1 (XI) specifically says that managerial discretion includes "selection . . . of its personnel." Therefore filling vacancies is not a subject for bargaining. In addition, the Personnel Commission Rules detail the procedures on how such positions will be filled.

Item 16.4 is bargainable.

Application procedures are covered by Personnel Commission Rules and therefore are not bargainable. Likewise, promotions are governed by Rules of the Commission which control.



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

BOARD MEMBERS:

RICHARD H. CUMMINGS
JOSEPH B. MORIARTY
EDWARD L. ALLMAN
JAMES C. ANDERSON

Signed this 24th day of February, 1977.